

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE MARCH 24, 2011

**SENATE BILL**

**No. 200**

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**Introduced by Senator Wolk**  
(Coauthor: Assembly Member Bill Berryhill)

February 8, 2011

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~~An act to add Section 85321.5 to the Water Code, relating to water.~~  
*An act to amend Sections 12986 and 12987.5 of the Water Code, relating to water projects.*

LEGISLATIVE COUNSEL'S DIGEST

SB 200, as amended, Wolk. ~~Sacramento-San Joaquin Delta: Bay Delta Conservation Plan.~~ *Delta levee maintenance.*

*Existing law establishes a delta levee maintenance program pursuant to which a local agency may request reimbursement for costs incurred in connection with the maintenance or improvement of project or nonproject levees in the Sacramento-San Joaquin Delta. Existing law declares legislative intent to reimburse eligible local agencies under this program, until July 1, 2013, in an amount not to exceed 75% of those costs that are incurred in excess of \$1,000 per mile of levee, and on and after that date, in an amount not to exceed 50% of those described costs.*

*This bill, instead, would declare legislative intent to reimburse up to 75% of those described costs until July 1, 2020, and on and after that date, to reimburse up to 50% of those described costs.*

*Existing law, until July 1, 2013, authorizes the board to provide funds to an eligible local agency under this program in the form of an advance in an amount that does not exceed 75% of the estimated state share.*

*This bill would extend the operation of that authorization to July 1, 2020.*

~~Existing law imposes requirements on the Department of Water Resources in connection with the preparation of a Bay Delta Conservation Plan (BDCP):~~

~~The Delta Reform Act of 2009 requires the Delta Stewardship Council to consider the BDCP for inclusion in a specified Delta Plan, and authorizes the incorporation of the BDCP into the Delta Plan if the BDCP meets certain requirements.~~

~~This bill would require any state agency that is responsible for authorizing or implementing any action in implementation of the BDCP to ensure that the action is consistent with specified requirements prescribed by the bill. The bill would make related legislative findings and declarations.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 12986 of the Water Code, as amended by  
2     Section 1 of Chapter 23 of the Statutes of 2010, is amended to  
3     read:

4     12986. (a) It is the intention of the Legislature to reimburse  
5     an eligible local agency pursuant to this part for costs incurred in  
6     any year for the maintenance or improvement of project or  
7     nonproject levees as follows:

8     (1) No costs incurred shall be reimbursed if the entire cost  
9     incurred per mile of project or nonproject levee is one thousand  
10    dollars (\$1,000) or less.

11    (2) Not more than 75 percent of any costs incurred in excess of  
12    one thousand dollars (\$1,000) per mile of project or nonproject  
13    levee shall be reimbursed.

14    (3) (A) As part of the project plans approved by the board, the  
15    department shall require the local agency or an independent  
16    financial consultant to provide information regarding the agency's  
17    ability to pay for the cost of levee maintenance or improvement.  
18    Based on that information, the department may require the local  
19    agency or an independent financial consultant to prepare a  
20    comprehensive study on the agency's ability to pay.

(B) The information or comprehensive study of the agency's ability to pay shall be the basis for determining the maximum allowable reimbursement eligible under this part. Nothing in this paragraph shall be interpreted to increase the maximum reimbursement allowed under paragraph (2).

(4) Reimbursements made to the local agency in excess of the maximum allowable reimbursement shall be returned to the department.

(5) The department may recover, retroactively, excess reimbursements paid to the local agency from any time after January 1, 1997, based on an updated study of the agency's ability to pay.

(6) All final costs allocated or reimbursed under a plan shall be approved by the reclamation board for project and nonproject levee work.

(7) Costs incurred pursuant to this part that are eligible for reimbursement include construction costs and associated engineering services, financial or economic analyses, environmental costs, mitigation costs, and habitat improvement costs.

(b) Upon completion of its evaluation pursuant to Sections 139.2 and 139.4, by January 1, 2008, the department shall recommend to the Legislature and the Governor priorities for funding under this section.

(c) Reimbursements made pursuant to this section shall reflect the priorities of, and be consistent with, the Delta Plan established pursuant to Chapter 1 (commencing with Section 85300) of Part 4 of Division 25, as enacted by Section 39 of Chapter 5 of the Seventh Extraordinary Session of the Statutes of 2009.

(d) This section shall become inoperative on July 1, ~~2013~~ 2020, and, as of January 1, ~~2014~~ 2021, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2014~~ 2021, deletes or extends the dates on which it becomes inoperative and is repealed.

*SEC. 2. Section 12986 of the Water Code, as amended by Section 2 of Chapter 23 of the Statutes of 2010, is amended to read:*

12986. (a) It is the intention of the Legislature to reimburse from the General Fund an eligible local agency pursuant to this

1 part for costs incurred in any year for the maintenance or  
2 improvement of project or nonproject levees as follows:

3 (1) No costs incurred shall be reimbursed if the entire cost  
4 incurred per mile of levee is one thousand dollars (\$1,000) or less.

5 (2) Fifty percent of any costs incurred in excess of one thousand  
6 dollars (\$1,000) per mile of levee shall be reimbursed.

7 (3) The maximum total reimbursement from the General Fund  
8 shall not exceed two million dollars (\$2,000,000) annually.

9 (b) This section shall become operative on July 1, ~~2013~~ 2020.

10 *SEC. 3. Section 12987.5 of the Water Code is amended to read:*

11 12987.5. (a) In an agreement entered into under Section 12987,  
12 the board may provide for an advance to the applicant in an amount  
13 not to exceed 75 percent of the estimated state share. The  
14 agreement shall provide that no advance shall be made until the  
15 applicant has incurred costs averaging one thousand dollars  
16 (\$1,000) per mile of levee.

17 (b) Advances made under subdivision (a) shall be subtracted  
18 from amounts to be reimbursed after the work has been performed.  
19 If the department finds that work has not been satisfactorily  
20 performed or where advances made actually exceed reimbursable  
21 costs, the local agency shall promptly remit to the state all amounts  
22 advanced in excess of reimbursable costs. If advances are sought,  
23 the board may require a bond to be posted to ensure the faithful  
24 performance of the work set forth in the agreement.

25 (c) This section shall become inoperative on July 1, ~~2013~~ 2020,  
26 and, as of January 1, ~~2014~~ 2021, is repealed, unless a later enacted  
27 statute, that becomes operative on or before January 1, ~~2014~~ 2021,  
28 deletes or extends the dates on which it becomes inoperative and  
29 is repealed.

30 ~~SECTION 1. The Legislature finds and declares all of the~~  
31 ~~following:~~

32 ~~(a) Removing remaining barriers to achievement of the coequal~~  
33 ~~goals described in Section 85054 of the Water Code remains a~~  
34 ~~priority for the Legislature and the state.~~

35 ~~(b) It is the intent of the Legislature to avoid potential conflicts~~  
36 ~~in achieving the coequal goals described in Section 85054 of the~~  
37 ~~Water Code by ensuring that state actions within the~~  
38 ~~Sacramento-San Joaquin Delta are equitable and do not redirect~~  
39 ~~negative impacts from one entity or region of the state to another.~~

1     ~~(e) The Bay Delta Conservation Plan (BDCP), identified as one~~  
2 ~~tool that the state is pursuing to meet the coequal goals, is a plan~~  
3 ~~to provide 50-year permits compliant with the Natural Community~~  
4 ~~Conservation Planning Act (Chapter 10 (commencing with Section~~  
5 ~~2800) of Division 3 of the Fish and Game Code) and the federal~~  
6 ~~Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) for~~  
7 ~~the State Water Project, the Central Valley Project, and Mirant~~  
8 ~~Energy Company. The direct beneficiaries of the BDCP are those~~  
9 ~~that will receive regulatory permits and assurances under the~~  
10 ~~Natural Community Conservation Planning Act and the federal~~  
11 ~~Endangered Species Act of 1973 for actions within the~~  
12 ~~Sacramento-San Joaquin Delta. No other entity within the~~  
13 ~~Sacramento-San Joaquin Delta watershed will be provided~~  
14 ~~regulatory permits or operational assurances through the BDCP.~~

15     ~~(d) Consistent with the provisions of the Natural Community~~  
16 ~~Conservation Planning Act (Chapter 10 (commencing with Section~~  
17 ~~2800) of Division 3 of the Fish and Game Code), the BDCP is a~~  
18 ~~voluntary program. Responsibility for implementation of the BDCP~~  
19 ~~is the sole responsibility of the entities that choose to agree to the~~  
20 ~~terms of the permits resulting from the BDCP process.~~  
21 ~~Responsibility for implementation of BDCP conservation measures~~  
22 ~~by parties that have not chosen to participate in the program is not~~  
23 ~~consistent with the Natural Community Conservation Planning~~  
24 ~~Act or legally justifiable.~~

25     ~~(e) It is the intent of the Legislature to ensure that secured,~~  
26 ~~equitable funding to meet the coequal goals described in Section~~  
27 ~~85054 of the Water Code is available, that funding complies with~~  
28 ~~the beneficiary pays principle, and that actions to achieve the~~  
29 ~~coequal goals are affordable for ratepayers and the public.~~

30     ~~SEC. 2. Section 85321.5 is added to the Water Code, to read:~~

31     ~~85321.5. (a) Prior to authorizing or taking any action to~~  
32 ~~implement a conservation measure within the Bay Delta~~  
33 ~~Conservation Plan, any state agency that is responsible for~~  
34 ~~authorizing or implementing that action shall ensure that the action~~  
35 ~~is consistent with all of the following requirements:~~

36     ~~(1) The action shall not result in significant unmitigated negative~~  
37 ~~impacts to another entity or region. For purposes of this paragraph,~~  
38 ~~“negative impacts” include, but are not limited to, any impact that~~  
39 ~~would negatively affect the water right, water supply, water quality,~~  
40 ~~ecosystem function, flood risk, agricultural resources,~~

1 infrastructure, regulatory responsibility, or the economy of another  
2 entity or region without appropriate full mitigation.

3 ~~(2) The action shall have a viable funding source for the entire~~  
4 ~~period proposed for the implementation of the action. The funding~~  
5 ~~source shall be affordable for the ratepayers and contractors~~  
6 ~~supplying the funding, and shall be reasonably likely to be provided~~  
7 ~~by those ratepayers and contractors through secured funding~~  
8 ~~mechanisms.~~

9 ~~(3) Funding for the action shall be consistent with the beneficiary~~  
10 ~~pays principle. For purposes of this paragraph, “beneficiary pays~~  
11 ~~principle” means that only those identified as beneficiaries of the~~  
12 ~~Bay Delta Conservation Plan shall be responsible for providing~~  
13 ~~funding for the Bay Delta Conservation Plan.~~

14 ~~(4) The action shall be consistent with protecting and~~  
15 ~~maintaining public trust resources in the Delta. The action shall~~  
16 ~~be consistent with maintaining flows within the Delta and outflows~~  
17 ~~from the Delta that are necessary to maintain the public trust~~  
18 ~~resources of the Delta, the Suisun Marsh, and the San Francisco~~  
19 ~~Bay. Any action that results in reduced flow within the Delta or~~  
20 ~~outflow from the Delta shall be scientifically justified and~~  
21 ~~consistent with maintaining the existing statewide water rights~~  
22 ~~priority system, area of origin protections, and beneficial uses of~~  
23 ~~water within the Delta.~~

24 ~~(5) If the action requires additional waterflows in order to~~  
25 ~~mitigate for the action or meet conditions of a permit under the~~  
26 ~~Bay Delta Conservation Plan, the beneficiaries of the Bay Delta~~  
27 ~~Conservation Plan or the action shall be solely responsible for~~  
28 ~~identifying, developing, funding, and supplying those waterflows.~~  
29 ~~No other water rights holder or legal user of water shall be~~  
30 ~~responsible for supplying flows that may be necessary to permit~~  
31 ~~or mitigate for actions taken to comply with the Bay Delta~~  
32 ~~Conservation Plan, except for those water rights holders and parties~~  
33 ~~that are beneficiaries of the Bay Delta Conservation Plan.~~

34 ~~(6) The action shall be developed and implemented with the~~  
35 ~~input of all affected local governments and the public.~~

36 ~~(7) The action shall be implemented consistent with existing~~  
37 ~~efforts to manage wildlife within the Delta, Suisun Marsh, and the~~  
38 ~~San Francisco Bay, including adopted plans for management of~~  
39 ~~the Yolo Wildlife Area, the Suisun Marsh Conservation District,~~  
40 ~~the San Francisco Bay Plan, and the federal Migratory Bird Treaty~~

1 ~~Act (16 U.S.C. Sec.703 et seq.), and applicable local natural~~  
2 ~~community conservation plans.~~

3 ~~(8) The action shall not violate any legal contract to maintain~~  
4 ~~water quality within the Delta, including but not limited to, the~~  
5 ~~contract between the department and the North Delta Water~~  
6 ~~Agency, dated January 28, 1981, and the contract between the~~  
7 ~~department and the City of Antioch, dated April 11, 1968.~~

8 ~~(b) Nothing in this section supersedes, reduces, or otherwise~~  
9 ~~affects existing legal protections, both procedural and substantive,~~  
10 ~~relating to the state board's regulation of diversion and use of~~  
11 ~~water, including, but not limited to, water right priorities, the~~  
12 ~~protection provided to municipal interests by Sections 106 and~~  
13 ~~106.5, and changes in water rights. Nothing in this section expands~~  
14 ~~or otherwise alters the board's existing authority to regulate the~~  
15 ~~diversion and use of water or the courts' existing concurrent~~  
16 ~~jurisdiction over California water rights.~~